

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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:
UNITED STATES OF AMERICA, : Case No. S2 21 Cr. 706 (JPO)
- against - :
BRIAN BENJAMIN, : DECLARATION OF
: BARRY H. BERKE, ESQ.
Defendant :
:
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BARRY H. BERKE, ESQ., hereby declares, pursuant to 28 U.S.C. § 1746 and under penalty of perjury, as follows:

1. I am a partner at the law firm of Kramer Levin Naftalis & Frankel LLP, counsel for defendant Brian Benjamin in the above-captioned action.
2. I submit this declaration to provide the Court with documents and information pertinent to Mr. Benjamin's Pretrial Motions.
3. Exhibit A is a copy of an email sent by Joel Cohen to the Southern District United States Attorney's Office on April 10, 2022 at 6:04 p.m., with an attached one-page document entitled, "GUILTY PLEA ALLOCUTION OF GERALD MIGDOL." (SDNY_BB_00130204-00130205).
4. Exhibit B is a copy of a Form FD-302 relating to the government's interview of Gerald Migdol on December 10, 2021. (SDNY_BB_00129871-00129879).
5. Exhibit C is a copy of an email sent by David Abramowicz to Tara LaMorte, Alison Moe, and Jarrod Schaeffer on April 10, 2022 at 9:02 p.m., with the subject line "2022.04.10 notes from call with Gerald Migdol attorney Joel Cohen." (SDNY_BB_00130206-00130207).

6. Exhibit D is a copy of an email sent by David Abramowicz to Joel Cohen on April 10, 2022 at 9:20 p.m., with the text of a “proposed allocution” appended. (SDNY_BB_00130208–00130209).

7. Exhibit E is a copy of a letter sent by the Southern District United States Attorney’s Office to defense counsel on May 20, 2022, responding to defense counsel’s request for a bill of particulars.

8. Exhibit F is an excerpt of a copy of the Application and Affidavit for a Search and Seizure Warrant, *In the Matter of the Application of the U.S. for a Search and Seizure Warrant*, No. 21-MAG-12159 (S.D.N.Y. Dec. 20, 2021). (SDNY_BB_00000224 at 243–44).

9. Exhibit G is an excerpt of a copy of the Application and Affidavit for a Search and Seizure Warrant, *In the Matter of the Application of the U.S. for a Search and Seizure Warrant*, No. 21-MAG-11051 (S.D.N.Y. Nov. 17, 2021). (SDNY_BB_00000054 at 064–79).

10. Exhibit H is a copy of a letter sent by the Southern District United States Attorney’s Office to Joel Cohen and Jerry Goldfeder on April 6, 2022. (SDNY_BB_00130427–00130433).

11. Exhibit I is a copy of a letter from the Southern District United States Attorney’s Office to defense counsel on June 23, 2022, responding to defense counsel’s request for additional disclosures.

12. Exhibit J is a copy of handwritten notes from the government’s interview of Gerald Migdol on April 10, 2022. (SDNY_BB_00130393).

13. Exhibit K is a [REDACTED] Federal Bureau of Investigation Special Agent David Calhoun given April 11, 2022. [REDACTED].

14. Exhibit L is a copy of a letter from defense counsel to the Southern District United States Attorney's Office on June 1, 2022, requesting disclosures from the government.

15. Exhibit M is a copy of a letter from the Southern District United States Attorney's Office to defense counsel on June 16, 2022, responding to defense counsel's request for disclosures from the government.

16. Exhibit N is a copy of a Form FD-302 relating to the government's January 25, 2022 interview of Gerald Migdol. (SDNY_BB_00129946-00129950).

17. Exhibit O is a copy of a Form FD-302 relating to the government's March 28, 2022 interview of Gerald Migdol. (SDNY_BB_00130022-00130026).

18. Exhibit P is a copy of a Form FD-302 relating to the government's December 17, 2021 interview of Aaron Migdol. (SDNY_BB_00130253-00130262).

19. Pursuant to Local Criminal Rule 16.1, I hereby confirm that counsel for Mr. Benjamin conferred with counsel for the government in a good faith effort to resolve the issues raised by Mr. Benjamin's discovery motion and motion for a bill of particulars, but the parties were unable to reach an agreement.

Dated: New York, New York
June 24, 2022

By: /s/ Barry H. Berke
Barry H. Berke